

# TEXT AMENDMENT STAFF REPORT



Hearing Date: N/A

Case File #: TA-16-05

General Description: Amend Article 2, General Regulations in the UDO to replace previous section of the Town Code into the UDO regarding maintenance of bulkheads, docks, and piers.

☒ Town Initiated

☐ Citizen Initiated

Applicant(s): Town of Sunset Beach

## APPLICATION OVERVIEW:

The Sunset Beach Planning & Inspections Department has initiated an application to amend Article 2 in the UDO to place previous ordinance language from the Town Code into the UDO. This proposal is to replace former language related to maintenance of docks, piers, and bulkheads. This application is being initiated by Town staff at the direction of the Planning Board and Town Council. The concern from the Town Council was centered on the apparent omission of former Town Code standards in the UDO at the time of its adoption. The Planning Board expressed a need to place this or a derivation of these standards back into the current code.

## STAFF COMMENTARY

Staff has reviewed the UDO for the appropriate sections to incorporate previous language in the current code. Staff has received indication from the Town's new CAMA field representative that it would be beneficial for the Town to have the language in our development ordinance as a supplement to any enforcement actions that may or may not be taken by CAMA. As such, staff is proposing to insert the slightly modified, previous provision into the UDO in Article 2. The modification reflects the enforcement action being the responsibility of the UDO Administrator instead of an inspector. The original text amendment has been modified for consistency enforcement and penalties outlined in the UDO. In addition, a more reasonable time period (30 – 90 days) has been provided for compliance with this ordinance.

**Update 12-8-16:** This amendment has been reviewed by the Town attorney. However, an issue remains in the event the owner does not do what the Town's notice says the owner needs to do. Specifically, how can the Town exercise its police power or authority regarding bulkhead repairs? Accordingly, the Town attorney is still researching further enforcement mechanisms, but sees no problem with proceeding with adoption of the current language.

Referenced Ordinance Text:

1.12 (G) Penalties and **Remedies for Violations.**

- (1) **Violation** of any Town ordinance is a misdemeanor or infraction as provided in NCGS 14-4. The maximum fine, term of imprisonment, or infraction penalty is the maximum as set forth in NCGS 14-4, unless a lesser amount is otherwise specifically provided herein.
- (2) In addition to constituting a misdemeanor or infraction as provided in NCGS 14-4, **violation** of a Town ordinance shall subject the offender to a civil penalty in accordance with the fee schedule as established by the **Town Council** to be recovered by the Town in a civil action in the nature of debt if said civil penalty is not paid by the offender within seventy-two (72) hours after being cited for the **violation**.
- (3) Any provision of this Ordinance or any other Town ordinance may be enforced by an appropriate equitable **remedy** issuing from a court of competent jurisdiction. In such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate and it shall not be a defense to the application of the Town for equitable relief that there is an adequate **remedy** at law.
- (4) Each day that any **violation** continues after notification by the **UDO Administrator** that such **violation** exists shall be considered a separate offense for purposes of the penalties and remedies specified in this section. Separate notices will not be provided for each **violation**.
- (5) Any one (1), all, or a combination of the foregoing penalties and remedies may be used to enforce this Ordinance.

**PROPOSAL****Section 2.20 Maintenance of Docks, Piers, and Bulkheads.**

**(A)** Docks, Piers and Bulkheads shall be kept in good repair and condition so as to not adversely threaten or affect the health, safety or general welfare of adjacent property owners or the general public. In the event the Town determines that a dock, pier or bulkhead is **does not meet the minimum standards for structural condition as set forth herein** ~~is in a condition to adversely threaten or affect the health, safety or general welfare of adjacent property owners or the general public,~~ staff shall notify the owner of the defective conditions along with the repairs required to remedy said condition. ~~The owner shall have fourteen (14) days from notification to make the necessary repairs to said dock, pier or bulkhead. If repairs cannot be made in the fourteen (14) day time period, the owner shall notify the Town within said time period to request an extension.~~

**(A) Minimum Standards for structural condition**

- (1) Walls, partitions or supporting members, sills, joists, rafters or other structural members shall not list, lean or buckle and shall not be damaged.
- (2) Floors and roofs shall have adequate supporting members and strength to be reasonably safe.
- (3) Foundations, foundation walls, piers, pilings or other foundation supports shall not be deteriorated or damaged.
- (4) Steps, stairs, landings, porches, decks, gazebos, walkways or other parts or appurtenances shall be maintained in such condition that they not fail or collapse.

**(B)** ~~In the event that the owner fails to timely repair the dock, pier, or bulkhead, as required by the Town, and the dock, pier or bulkhead is in a condition so as to be of imminent threat to the health, safety or general welfare of the adjacent property owners or the general public, the town may remove and dispose of said structure upon five (5) days notice to the owner thereof.~~

**(B) Owner to correct hazard.**

- (1) ~~If after inspection the by the Town's Planning and Inspections Department it is found that such structure is in a damaged condition to the extent that it no longer meets the minimum standards for structural condition as set forth in Section A, the UDO Administrator shall notify the owner of such structure in writing to have the same demolished, removed, repaired or otherwise properly secured within thirty (30) days. The notice shall state the department's findings as to the condition of the structure.~~

- (2) Where demolition, repair, or removal is not practicable within the specified time, the UDO Administrator may extend that time by an additional ten (10) days on the condition that the owner take such measures to secure the structure so as to prevent accident or injury until such time as the owner can fully comply with the order.
- (3) In no instance shall the owner fail to have the structure demolished, repaired, or removed within ninety (90) days of the issuance of the final notice. If repairs have not been made and inspected for compliance with N.C. State Building Code and Section A, within ninety (90) days of the issuance of the final notice, the owner will be subject to penalties and remedies outlined in Section 1.12 (G) of this ordinance.

## **PLANNING BOARD SUMMARY**

### **Action:**

- (A) \_\_\_\_\_ The Planning Board hereby recommends adoption of the proposed UDO Amendment for Article 2 to add subsection 2.20 Maintenance of Docks, Piers, and Bulkheads by the Town Council and finds that the proposed amendment to the Unified Development Ordinance is:
- (i) consistent with the Town's comprehensive plan (2010 Town of Sunset Beach CAMA Land Use Plan) and all other applicable plans and policies adopted by the Town, which is consistent with Goal 12 of the Land Use Compatibility Policy Statements: "Bulkhead installation, groins, or seawalls must be built in compliance with CAMA's 7H and other state guidelines. Maintenance and replacement of existing bulkheads will be permitted" and
  - (ii) that it is in the public interest because it will advance the public health, safety, and/or welfare of the Town of Sunset Beach.

Recommend Approval (A)   X    
 (For   5   Against   0   Abstained   0   )

### **Commentary:**

[UPDATE for 01-19-17] The Planning Board hereby recommends approval of the proposed text amendment.

## **TOWN COUNCIL SUMMARY**

### **Action:**

(B) \_\_\_\_\_ The Town Council hereby adopts the proposed UDO Amendment for Article 2 to add subsection 2.20 Maintenance of Docks, Piers, and Bulkheads by the Town Council and finds that the proposed amendment to the Unified Development Ordinance is:

- (iii) consistent with the Town's comprehensive plan (2010 Town of Sunset Beach CAMA Land Use Plan) and all other applicable plans and policies adopted by the Town, which is consistent with Goal 12 of the Land Use Compatibility Policy Statements: "Bulkhead installation, groins, or seawalls must be built in compliance with CAMA's 7H and other state guidelines. Maintenance and replacement of existing bulkheads will be permitted" and
- (iv) that it is in the public interest because it will advance the public health, safety, and/or welfare of the Town of Sunset Beach.

Adopted \_\_\_\_\_ Denied \_\_\_\_\_

(For \_\_\_\_\_ Against \_\_\_\_\_ Abstained \_\_\_\_\_)